

Comptroller General  
of the United States

Washington, D.C. 20548

145103

## Decision

**Matter of:** Ted's Trash Service, Inc.

**File:** B-245532

**Date:** October 22, 1991

Brenda Ferrell for the protester,  
Brian V. Thomas for Thomas Disposal Service, Inc. an  
interested party,  
Robert C. MacKichen Jr., Esq., General Services  
Administration, for the agency.  
David Hasfurther, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Bid was properly rejected as nonresponsive where the bidder failed to submit a signed Certificate of Procurement Integrity with its bid.

### DECISION

Ted's Trash Service, Inc. protests the rejection of its bid as nonresponsive for failure to include with its bid a signed Certificate of Procurement Integrity, as required by invitation for bids (IFB) No. GS-06P-91-GXC-0070, issued by the General Services Administration.

We dismiss the protest.

The IFB, incorporated the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8 (FAC 90-2) as required by FAR § 3.104-10(a) (FAC 90-2). This clause implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C.A. § 423(e)(1) (West Supp. 1991), a statute which bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the OFPP Act. The activities prohibited by the OFPP Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Under FAR § 52.203-8, bidders are to complete the certificate, where indicated, by identifying the individual certifier, providing the

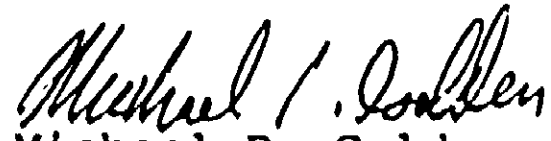
solicitation number and the name of the offeror, listing all violations or possible violations of the OFPP Act (or entering "none" if none exists), and signing the certificate. FAR § 3.104-9(b)(3) (FAC 90-2) provides that for procurements using sealed bidding procedures, as here, a signed procurement integrity certification "shall be submitted by each bidder with the bid submission . . . ." FAR § 14.404-2(m) (FAC 90-5) provides that "[a] bid shall be rendered nonresponsive and rejected if the bidder fails to submit the signed certificate . . . with its bid." Section K of the IFB similarly cautioned prospective bidders that the certification was a material representation of fact to be relied on in awarding the contract and that the failure of a bidder to submit the signed certificate with its bid by bid opening shall render the bid nonresponsive.

Ted's submitted the low bid. However, because its bid did not contain a signed Certificate, it was rejected as nonresponsive. Ted's believes that it should be permitted to furnish a completed certificate after bid opening so that an award may be made to the firm.

The certification's requirements obligate a named individual--the officer or employee of the contractor responsible for the bid--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certification is required to collect similar certifications from all other individuals involved in the preparation of bids or offers. The certification provisions also prescribe specific contract remedies--including withholding of profits from payments and terminating errant contractors for default--not otherwise available. These provisions, which impose substantial legal obligations on the contractor, are materially different from those to which the bidders otherwise are bound; accordingly, the requirement for a separate, signed and completed Certificate of Procurement Integrity, to be submitted with the bid submission, is a material requirement of the IFB that affects the bid's responsiveness. See Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. \_\_\_\_\_, 91-1 CPD ¶ 483. We thus have found that a bid is properly rejected as nonresponsive for the bidder's failure to submit a signed Certificate of Procurement Integrity with its bid, even though the bidder signed its bid and acknowledged the amendment that added the certification requirement to the solicitation. Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. \_\_\_\_\_, 91-1 CPD ¶ 342.

Since the obligations imposed in the certificate are material, we cannot consider the protester's failure to sign and submit with its bid its certificate a minor informality capable of being cured after bid opening. See Environmental Management Servs., B-244783, Aug. 1, 1991, 91-2 CPD ¶ 114; Ed A. Wilson, Inc., B-244634, July 12, 1991, 91-2 CPD ¶ 53. To do so would permit a bidder to decide after bid opening whether to comply with a material term of an IFB, which strains the integrity of the competitive bidding system by giving otherwise successful bidders an opportunity to walk away from a low bid. General Kinetics Inc., Cryptek Division, B-244148, Aug. 19, 1991, 91-2 CPD 166.

The protest is dismissed.

  
Michael R. Golden  
Assistant General Counsel